

1
2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Brian Kirby,

9 Plaintiff,

10 vs.

11 Ryan Thornell, et al.,

12 Defendants.
13
14

No. CV-23-02619-PHX-SPL (MTM)

ORDER

15 Plaintiff Brian Kirby filed a Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1). The
16 Honorable Michael T. Morrissey, United States Magistrate Judge, issued a Report and
17 Recommendation (“R&R”) (Doc. 66), recommending the Court dismiss Defendants
18 Ragsdale, Astrada, Davis, and Godlevsky for failure to serve pursuant to Federal Rule of
19 Civil Procedure 4(m).

20 A district judge “may accept, reject, or modify, in whole or in part, the findings or
21 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b); *see also* Fed. R. Civ.
22 P. 72(b)(3) (“The district judge may accept, reject, or modify the recommended disposition;
23 receive further evidence; or return the matter to the magistrate judge with instructions.”).
24 When a party files a timely objection to an R&R, the district judge reviews *de novo* those
25 portions of the R&R that have been “properly objected to.” Fed. R. Civ. P. 72(b)(3). A
26 proper objection requires specific written objections to the findings and recommendations
27 in the R&R. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1118–19 (9th Cir. 2003);
28 28 U.S.C. § 636(b)(1). It follows that the Court need not conduct any review of portions to

1 which no specific objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also*
2 *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review
3 is judicial economy). Further, a party is not entitled as of right to *de novo* review of
4 evidence or arguments which are raised for the first time in an objection to the R&R, and
5 the Court’s decision to consider them is discretionary. *United States v. Howell*, 231 F.3d
6 615, 621–622 (9th Cir. 2000).

7 On October 16, 2024, the Court ordered Plaintiff to show cause why Defendants
8 Ragsdale, Astrada, Davis, and Godlevsky should not be dismissed for failure to complete
9 service (Doc. 62). Plaintiff has not responded or otherwise taken any action. In the R&R,
10 the Magistrate Judge recommends Defendants Ragsdale, Astrada, Davis, and Godlevsky
11 be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, reasoning that
12 Plaintiff provided no discernable good cause for failure to serve those defendants in this
13 case (Doc. 66 at 3).

14 The parties did not file objections, which relieves the Court of its obligation to
15 review the R&R. *See Reyna-Tapia*, 328 F.3d at 1121; *Thomas v. Arn*, 474 U.S. 140, 149
16 (1985) (“[Section 636(b)(1)] does not... require any review at all... of any issue that is not
17 the subject of an objection.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine
18 *de novo* any part of the magistrate judge’s disposition that has been properly objected to.”).
19 The Court has nonetheless reviewed the R&R and finds that it is well-taken. The Court
20 will thus adopt the R&R in full. *See* 28 U.S.C. § 636(b)(1) (stating that the district court
21 “may accept, reject, or modify, in whole or in part, the findings or recommendations made
22 by the magistrate”); Fed. R. Civ. P. 72(b)(3) (“The district judge may accept, reject, or
23 modify the recommended disposition; receive further evidence; or return the matter to the
24 magistrate judge with instructions.”). Accordingly,

25 ///

26 ///

27 ///

28 ///

IT IS FURTHER ORDERED that Defendants Ragsdale, Astrada, Davis, and Godlevsky are **dismissed without prejudice**.

Dated this 27th day of January, 2025.

3